BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of the Application Of Verizon New Jersey, Inc. For Authorization To Provide In-Region InterLATA Services in the State of New Jersey	))))	CC Docket No. 01-347

COMMENTS OF ALLEGIANCE TELECOM OF NEW JERSEY, INC.

Allegiance Telecom of New Jersey, Inc. ("Allegiance"), by counsel, hereby responds to the Commission's invitation for comments on whether the *New Jersey Final UNE Rate Order*[1] demonstrates that Verizon New Jersey's rates are TELRIC-compliant. Allegiance submits that the "hot cut" nonrecurring charges adopted by the New Jersey Board of Public Utilities ("BPU") are not TELRIC-compliant and for this reason, the Commission should deny Verizon's 271 application.

Allegiance is a facilities-based local exchange carrier ("CLEC") providing service in Verizon's territory in Northern New Jersey. Allegiance delivers service to its customers using a combination of its own switching facilities and unbundled loops purchased from Verizon. As a result, Allegiance pays Verizon non-recurring hot cut charges on virtually all of its unbundled loop orders. The five fold increase in the hot cut rates approved in the *New Jersey Final UNE Rate Order* will materially increase Allegiance's and other facilities-based competitors' costs of doing business in New Jersey and will put them at a severe competitive disadvantage not only to Verizon, but also to those carriers that use none of their own facilities to serve end users, such as resellers and unbundled network element platform service providers ("UNE-P providers"). Consistent with the Court of Appeals most recent directive on this issue, the Commission must determine whether the new hot cut rates are so high that they will doom competition to failure. *Sprint Communications Company L.P. v. FCC,* No. 01-1076 (D.C. Cir. 2001).

Verizon's New Hot Cut Rates Are Anticompetitive

Prior to the BPU's establishment of new UNE rates for Verizon, the non-recurring hot cut rate in New Jersey was $32.16 per loop, consisting of a $23.55 service order charge and an $8.16 per loop charge. The new rate adopted by the BPU is $159.76 per loop, consisting of a $2.31 service order charge and a $157.45 per loop charge. This rate dwarfs the rates Verizon charges its end users for performing similar functions. For example, to connect a new or additional access line, Verizon charges its residential customers a service order charge of $28.25 and a central office exchange access line charge of $14.10.[2] Verizon charges its business customers a service order charge of $58.56 a central office exchange access line charge of $21.72.[3] For moves or changes, which are more comparable to the work entailed in a hot cut, Verizon's retail rates are $30.10 for residential customers (consisting of a $16 service order charge plus $14.10 to connect a new or additional line) and $41.90 for business customers (consisting of a $20.19 service order charge plus $21.71 to connect the line).[4]

[1] New Jersey Board of Public Utilities, *Review of Unbundled Network Elements Rates, Terms and Conditions of Bell Atlantic-New Jersey, Inc.,* Docket No. TO00060356, Decision and Order (released March 6, 2002 ("*New Jersey Final UNE Rate Order*").

[2] See Bell Atlantic – New Jersey, Inc. Tariff B.P.U. – N.J. No. 2, Section 3.1.2 and 3.1.3, Seventh Revised Page 3 and Eleventh Revised Page 7.

[3] *Id.*

[4] *Id.*

These enormous price differentials lead to one of two possible conclusions, neither of which supports grant of Verizon's 271 application. First, if the new hot cut rate of $159.76 is truly based on Verizon's costs, then the non-recurring rates that Verizon charges its retail customers are between $80 and $130 per line below its costs. To the extent that Verizon is offering its retail end users below cost rates, while charging its competitors cost-based rates for the same or comparable services, Verizon is engaging in classic price squeeze behavior that will have a devastating impact on the survival of facilities-based competition in New Jersey. Potential customers would have very little incentive to try a new service provider whose up front nonrecurring charges exceeded the incumbent monopolist's by $80 to $130 per line. On the record before it, the Commission cannot make a finding that the new non-recurring charges will not "doom[] competitors to failure," [5] because it is evaluating the state of competition in New Jersey based on circumstances that no longer exist. The record on which Verizon relies to demonstrate the existence of competition was created at a time when Verizon's wholesale non-recurring hot cut charges were comparable to its retail non-recurring charges. Today. however, Verizon's retail rates are a fraction of its wholesale rates.

Moreover, Section 254(k) of the Telecommunications Act of 1996 provides that "[a] telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition." Although end users in New Jersey may have a choice in local service providers and thus may comparison shop for the best rates, including non-recurring rates, facilities-based competitors who use Verizon loops to serve their customers have no choice but to use Verizon to perform the necessary hot cut. The huge disparity between Verizon's wholesale and retail nonrecurring charges certainly

[5] Sprint Communications Company L.P. v. FCC, No. 01-1076 (D.C. Circ. 2001), slip op. At 5.

raises the specter that Verizon is keeping its retail rates low by gouging its competitors, the very type of cross-subsidization prohibited by Section 254(k) of the Act. The Commission cannot make a finding that grant of Verizon's application would meet the public interest standard in Section 271(d)(3) without resolving this issue.

The second possible conclusion to be drawn from the disparity in the retail and wholesale rates is that Verizon's retail rates do in fact cover its costs and it is using its wholesale rates to generate supracompetitive profits. If that is the case, then Verizon's new non-recurring hot cut charges are not TELRIC compliant and the Commission cannot find that Verizon has implemented the requirements of item 2 of the Competitive Checklist. [6]

Verizon's New Jersey Hot Cut Rates Are Many Times Higher Than The Rates Charged in Neighboring States

In determining whether Verizon's New Jersey $159.76 per loop hot cut rate is TELRIC compliant, the Commission should be guided by the rates Verizon is charging in neighboring jurisdictions. In Pennsylvania, Verizon is charging $4.07 per loop (consisting of a $1.06 Service Order Processing Charge and a $3.01 installation charge.) In Massachusetts, Verizon is charging $15.26 per loop (consisting of a $1.90 charge for central office wiring and a $13.36 service connection charge). In Maryland, Verizon is charging $16.22 per loop (consisting of a service order charge of $6.70 and an installation charge of $9.52). The Commission must ask what it is about New Jersey that would cause Verizon's non-recurring hot cut costs to be 1000% higher than they are in neighboring states.

[6] Checklist item 2 requires Verizon to demonstrate that it is providing nondiscriminatory access to network elements in accordance with the requirements of section 252(d)(1). Section 252(d)(1) requires Verizon's network element rates to be cost-based.

Recent developments in New York also deserve the Commission's attention. In New York, the Public Service Commission recently approved a non-recurring hot cut rate of $187.50. Nonetheless, Verizon *voluntarily proposed* and the Commission ultimately ordered Verizon to credit "carriers purchasing 2-wire and 4-wire loop hot cuts sufficient to offset the difference between the cost-based rates established in the UNE rate order and a $35.00 charge, with no additional associated service order charges." [7] It simply strains credulity that the $187.50 hot cut rate is truly reflective of Verizon's costs and that Verizon would *voluntarily* absorb a loss of over $150 per loop, especially when it has fought the legality of the TELRIC standard so vigorously right up to the Supreme Court. *Verizon v. FCC* , S.Ct. Case No. 00-511. The fact that Verizon voluntarily agreed to reduce the hot cut rate to $35 in New York is persuasive evidence that its costs are much closer to $35 than $187.50 per loop. Given the rate levels in other neighboring jurisdictions, it is reasonable to assume Verizon's hot cut costs in New Jersey are also closer to $35 than $159.76.

The New Hot Cut Rates Are Discriminatory

In performing its public interest analysis, the Commission must also take into consideration the disparate impact the new hot cut non-recurring charges will have on facilities-based competitors. Neither carriers who provide service to end users via resale of Verizon's service nor carriers who provide service via UNE-P will be required to pay the $157.45 per loop hot cut charge. As a result, both Verizon and non facilities-based competitors will be in a position to offer customers a far more attractive up front package than will facilities-based competitors. Section 271(c)(1)(A) requires a finding that

[7] *Order Instituting Verizon Incentive Plan*, Case 00-C-1945 and Case 98-C-1357 (NYPSC, February 27, 2002), at 7, 33.

Verizon has opened the New Jersey market to *facilities-based competition* and that it will keep that market open once its application is approved. Implementation of a price structure that affirmatively discourages facilities-based competitors from entering or remaining in the New Jersey market and that unquestionably favors the use of resale and UNE-P over facilities deployment as the only economical modes of entry is inconsistent with and frustrates the purpose of Section 271(c)(1)(A).

Conclusion

For the foregoing reasons, the Commission should conclude that Verizon's nonrecurring UNE rates are not TELRIC compliant and deny its application to provide interLATA service in New Jersey.

Respectfully submitted,

Mary C. Albert
Vice President Regulatory and Interconnection
Allegiance Telecom of New Jersey, Inc.
1919 M Street N.W., Suite 420
Washington, D.C. 20036
Tel.: (202) 464-1796
Fax.: (202) 464-0762

March 13, 2002